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RECENT CRITICISM OF THE FEDERAL JUDICIARY.

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Within the last four years, the Governors of five or more states have thought it proper in official messages to declare that the Federal courts have seized jurisdiction, not rightly theirs and have exercised it to the detriment of the Republic, and to urge their respective legislatures to petition Congress for remedial action to prevent future usurpation. One legislature did present a memorial to Congress reciting the grievances of the people of its state against the Federal Judiciary and asking a curtailment of the powers unlawfully assumed by them.

The principal charge against the Federal courts, which an examination of these documents discloses, is that they have flagrantly usurped jurisdiction, first, to protect corporations and perpetuate their many abuses, and second, to oppress and destroy the power of organized labor.

These charges against the Federal Judiciary have not been confined to messages from state Governors. They also come from persons, who although not holding high office, have a standing before the Bar which entitles them to respectful attention. Much of what is found in the official communications I have referred to concerning the treatment of corporations by the Federal courts, has taken form from the articles and addresses of the editor of the *AMERICAN LAW REVIEW*. This gentleman, well-known as an able and prominent law text writer, has given much attention to the Federal decisions on corporate matters and has expressed his condemnation of many of them in language that has lacked nothing in freedom, emphasis or rhetorical figure.

¹ The above address delivered by Judge Taft, at the Annual Meeting of the American Bar Association in August, and revised by him for publication, is here published with his permission.

The one judicial system to which all the members of this Association bear the same relation, is that of the United States, and when I was honored with an invitation to address them, it at once occurred to me that I might properly ask their attention to a temperate discussion of the justice of these criticisms.

I have since been oppressed with the thought that the theme might with more propriety be left to one having no official relation to the Federal courts, but circumstances have prevented any change from my original impulse. I can only hope that my recent admission to the inferior ranks of the Federal Judiciary and my humble position therein will prevent the suggestion that what is here to be said has anything in it either of a personal defence, or of a quasi official character.

The opportunity freely and publicly to criticise judicial action is of vastly more importance to the people than the immunity of courts and judges from unjust aspersions and attack. Nothing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice, than the consciousness that every act of theirs is to be subjected to the intelligent scrutiny and candid criticism of their fellow men. Such criticism is beneficial in proportion as it is fair, dispassionate, discriminating and based on a knowledge of sound legal principles. The comments made by learned text writers and by the acute editors of the various law reviews upon judicial decisions are therefore highly useful. Such critics constitute more or less impartial tribunals of professional opinion before which each judgment is made to stand or fall on its merits, and thus exert a strong influence to secure uniformity of decision.

But non-professional criticism also is by no means without its uses, even if accompanied as it often is by a direct attack upon the judicial fairness and motives of the occupants of the Bench; for if the law is but the essence of common sense, the protest of many average men may evidence a defect in a judicial conclusion though based on the nicest legal reasoning and profoundest learning. The two important elements of moral character in a judge are an earnest desire to reach a just con-

clusion and courage to enforce it. In so far as fear of public comment does not affect the courage of a judge but only spurs him on to search his conscience and to reach the result which approves itself to his inmost heart, such comment serves a useful purpose. There are few men, whether they are judges for life or, for a shorter term, who do not prefer to earn and hold the respect of all, and who can not be reached and made to pause and deliberate by hostile public criticism. In the case of judges having a life tenure, indeed, their very independence makes the right freely to comment on their decisions of greater importance because it is the only practical and available instrument in the hands of a free people to keep such judges alive to the reasonable demands of those they serve.

On the other hand, the danger of destroying the proper influence of judicial decisions, by creating unfounded prejudices against the courts, justifies and requires that unjust attacks shall be met and answered. Courts must ultimately rest their defence upon the inherent strength of the opinions they deliver as the ground for their conclusions, and must trust to the calm and deliberate judgment of all the people as their best vindication. But the Bar has much to do with the formation of that opinion and a discussion before them may sometimes contain suggestions which bear good fruit.

Many persons whose good opinion is a high compliment regard the Federal Judiciary with so much favor that they would deprecate a consideration of the criticisms already stated, as likely to give an importance to them they do not deserve. I cannot concur in this view. I believe that in large sections of this country, there are many sincere and honest citizens who credit all that has been said against the Federal courts, and that it is of much importance that the reasons for the existence of these criticisms and their injustice be pointed out.

It is not unfair to those Governors who are the chief accusers of the Federal Judiciary to say that they knew that they were not speaking as they did, to unwilling ears. They were merely putting into language the hostile feeling of certain of their constituents toward the Federal courts and, but

for such feeling, the criticisms would hardly have been uttered. It will, therefore, in a large measure account for such criticisms, if we account for the popular sentiment they were made to satisfy.

It will be my endeavor, therefore, first to show that much, if not all, of the present hostility to the Federal courts in certain parts of the country and among certain groups of the people can be traced to causes over which those courts can exercise no control, and is necessarily due to the character of the jurisdiction with which they are vested, and not to injustice in its exercise ; and, second, that the criticisms which such hostility has engendered are in themselves without foundation.

The history of the Federal courts since their beginning is full of instances where the exercise of their jurisdiction has involved them in popular controversies and has brought down upon them the bitter assaults of those unfavorably affected by their decisions. Yet the event has justified their course and shown the injustice of the attacks.

The Federal Constitution was framed to create a national government with limited powers, and to mark the line between its jurisdiction on the one hand, and that of the states and the people on the other. By virtue of its eighth article, the state courts and *a fortiori* the Federal courts, were vested with the power and charged with the duty in judicial cases arising before them, of ignoring state laws in conflict with the Federal Constitution. By necessary implication, their obedience to the fundamental law also required them to ignore Acts of Congress, which were so plainly in violation of the constitution that even the necessary and high respect due to the construction by Congress of its own powers could not give such acts the force of law.

The Federal Judiciary at once became the arbiter in the first great political controversy of the United States and one which is continually reappearing in various forms. The general language of the constitution required construction to apply it to judicial cases arising in the organization and maintenance of the government. The two parties which had engaged in

heated controversy over the adoption of the covenant at all, continued it over its narrow or broad interpretation. The Supreme Court in the beginning was made up largely of men whose predilection was for a liberal construction and who believed thoroughly in the national idea. This was soon manifest in their decisions, which called down upon the court the anathemas of the strict constructionists, whose great effort it thereupon became to weaken the power of the judiciary. It was attempted to control their independence by making very wide the grounds for impeachment. The great Chief Justice was constantly threatened with this fate by partisans, and the attacks upon his alleged usurpations were frequent and fierce. Jefferson's severe words concerning the Federal Judiciary, now so often quoted by their latter day critics, were written about 1820 as the result of the decision, in *Cohens v. Virginia*, reaffirming the power of the Supreme Court of the United States to reverse the decision of the Supreme Court of a state on the validity of a state law under the Federal Constitution. It is not surprising that he who had inspired the Kentucky resolutions of 1798, declaring the right of a state to decline compliance with a Federal law, deemed by it to be in conflict with the fundamental compact, should regard the Federalist Supreme Court, which itself asserted the right finally to decide such a question, to be "a thief of jurisdiction."

Upon political questions, and such are those arising in the construction of a political charter, there always have been and always will be differences of opinion. There is frequently no absolute standard, even a century after, in deciding the abstract right of them. We must be content to abide the result reached by the verdict and acquiescence of the people whose interests were involved. Before this tribunal, the position of John Marshall and his associates on the Supreme Bench has been vindicated, and the criticisms of Thomas Jefferson have been refuted.

Beginning then as arbiters in a political conflict, and wielding similar powers until to-day, the Federal Judiciary have never enjoyed immunity from hostile attack upon their con-

duct or their motives. The great controversy over the fugitive slave law needs no recounting here. In the eyes of the abolitionists, the Federal courts and their marshals were instruments of hell in enforcing the law, and yet there could not be the slightest doubt that such a jurisdiction was plainly within the constitution. The change of feeling toward the Federal courts because of the change in their jurisdiction with respect to the negro race, affords an apt illustration of how mere jurisdiction may affect the popular feeling toward a court. Before the war, the Southern people had not looked with disfavor upon courts, which did so much to preserve their property, while at the same time the abolitionists regarded them with aversion. After the war, when for the protection of the negro in his electoral and civil rights, the election and civil rights bills were passed, and their enforcement was given to the Federal courts, they became at the same time the objects of hatred and condemnation at the South and the great reliance of those who had been abolitionists at the North. Now that both parties have wisely decided to let the election problem work itself out, and to await the local solution, which the results of fraud and violence in elections will compel, the feeling of hostility at the South against the Federal Judiciary has greatly abated.

This is but one of many historical instances showing how the Federal courts may be subjected to the most severe criticism without just grounds, merely because of the character of their jurisdiction. I come now to review the reasons why their mere jurisdiction has created a deep impression in many parts of the country that the evils due to corporations are fostered by them.

The last two generations have witnessed a marvellous material development. It has been effected by the organization and enforced co-operation of simple elements that for a long time previous had been separately used. The organization of powerful machines or of delicate devices by which the producing power of one man was increased fifty or one hundredfold was, however, not the only step in this great progress. The aim of all material civilization in its hard contest with nature was the reduction of the cost of production, because thereby

each man's day's work netted him more of the comforts of life. Within the limits of efficient administration, the larger the amount to be produced at one time and under one management, the less the expense per unit. Therefore, the aggregation of capital, the other essential element with labor in producing anything, became an obvious means of securing economy in the manufacture of everything. Corporations had long been known as convenient commercial instruments for securing and wielding efficiently such aggregations of capital. Charters were at first conferred by special act upon particular individuals and with varying powers, but so great became the advantage of incorporation with the facility afforded for managing great enterprises, and the limitation of the liability of investors, that it was deemed wise in this country in order to prevent favoritism, to create corporations by general laws and thus to afford to all who wished it, the opportunity of assuming a corporate character in accordance therewith. The result was a great increase in the number of the corporations and the assumption of the corporate form by seven-eighths of the active capital of the country. The great saving in the cost of production brought about by mechanical inventions and the organization of capital worked incalculable benefit to the public, but the necessary price of it under our system of free right of contract and inviolate rights of private property was a division of the profit between those who were to consume the product and those whose minds conceived and whose hands executed the work of production. The total wealth of the whole country was thus enormously increased, but of the increase more was necessarily accumulated in some hands than others. In the general prosperity caused by the revolution in methods of production, captains of industry amassed fabulous fortunes, and the aggregations of capital under corporate management became so great as to stagger the imagination. In the mad rush for money which previous successes had stimulated, it is not to be wondered at that some of the accumulated wealth was corruptly used to secure undue business advantages from legislative and executive sources, and that many of the political agencies of the people

became tainted. The impersonal character of corporations afforded a freedom from that restraint in the use of money for political corruption, which is often present when the would-be briber is an individual. Men of good repute with complacency and intentional ignorance acquiesced in the use of corporate funds to buy legislators and councilmen in the corporate interest when they would not wish or dare to adopt such methods in their individual business. The enormous increase in corporate wealth furnished the means of corruption, and the prospect of ill-gotten gains attracted the dishonest trickster into politics and debauched the weak, while the honest and courageous were often driven into private life. The Genie of corruption in politics, which the corporations called up has lived to plague them, and, although many great companies have secured all they wish from legislative bodies, they are regarded by the political blackmailers as fair game, and the corruption fund is still maintained to prevent oppression. The people not unjustly have charged these public evils to the management of corporations.

Another evil has been the injustice done to the real owners of corporate property by the reckless and dishonest management of its nominal owners. The great liberality of the general laws for the formation of corporations, and the entire failure to exercise any stringent visitorial powers over them, have enabled the active promoters and managers of large enterprises carried on at a distance from the homes of the real owners to increase the corporate indebtedness and capital stock so far beyond any fair valuation of their property as to put the entire control of it in the hands of the holders of worthless stock, who have nothing at stake in the corporate success. The real owners, the bondholders, are at the mercy of this irresponsible management till insolvency comes. The reckless business methods, which such an irresponsibility and lack of supervision invite, create an unhealthy and feverish competition in every market, wholly unrestrained by the natural caution which the real owner of a business must feel. The concern is kept going with no hope of legitimate profit, but simply to pay large salaries, or to favor unduly

some other enterprise in which the managers have a real interest.

Another reason for popular distrust of corporate methods is the use by corporations of great amounts of capital to monopolize and control particular industries. It is my sincere belief that no such control or monopoly can be maintained permanently, unless it is buttressed by positive legislation giving an undue advantage over the public and competitors. Of course, by close business methods and by improving all the economical advantages which the manufacture of a commodity on an enormous scale affords, the cost of production may be so reduced as to discourage competition on a smaller scale, but, unless the fear of it performs the same useful office for the benefit of the public by continuing the lowest profitable prices, actual competition will certainly appear. Whatever the fate such trusts may ultimately have, it has often happened that in their formation and early history, the plan adopted has been the forced buying out of every competitor or his ruin by under-selling him at heavy loss, so as to put the public and the market for a time at least at the mercy of one greedy corporate concern. Such methods and such a result naturally fill the people with anxious fears and a hostile feeling toward aggregations of corporate wealth.

In spite of these well-known evils, nothing can be clearer to a calm, intelligent thinker than that under conditions of modern society, corporations are indispensable both to the further material progress of this country and to the maintenance of that we have enjoyed. The evils must be remedied, but not by destroying one of the greatest instruments for good that social man has devised. Nevertheless, so strong has the hostility to corporations become, especially in certain of the Southern and Western states where the agricultural community is large, life is hard and wealth is rare, that any plan which can be contrived to diminish the property of corporations, or to cripple their efficiency seems to meet with favor. The feeling is especially directed against the railway corporations, although without their aid and presence, these very communities would be helpless and poor, indeed.

The last decade in Europe has been prolific of doctrines and theories for the amelioration of the human race by the abolition of private property and private capital, by the vesting of all the means of production in the government for the benefit of all the people, and by the distribution of the product according to fixed standards of merit. While socialism has not obtained much of a foothold in this country as such, even in those sections already referred to, schemes which are necessarily socialistic in their nature are accepted planks in the platform of a large political party. The underlying principle of such schemes is that it is the duty of the Government to equalize the inequalities which the rights of free contract and private property have brought about, and by enormous outlay derived as far as possible from the rich, to afford occupation and sustenance to the poor. However disguised such plans of social and governmental reform are, they find their support in the willingness of their advocates to transfer without any compensation from one who has acquired, a large part of his acquisition to those who have been less prudent, energetic and fortunate. This of course involves confiscation and the destruction of the principle of private property.

Under the fourteenth amendment the question whether legislation and state action deprive any person of his property without due process of law has become a Federal one, and by the Act of 1875, it is cognizable by the Circuit Courts of the United States.

The prejudices above adverted to have led to much legislation hostile to corporations both resident and non-resident. It takes the form of discriminating taxation, of the regulation of rates to be charged by those companies engaged in quasi public business, and sometimes of the direct deprivation of vested rights. In all such cases resort is at once had to the inferior Federal courts by the corporations injuriously affected, to test the validity of the state's action, and it not infrequently happens that it becomes the duty of such courts to declare void the legislation involved and to enjoin state officers from seizing or injuring the property of corporations under its provisions. Such a decision in a corporation-hating

community at once tends to mark the Federal courts as friends and protectors of corporations.

The repeated efforts of different state legislatures to impose restrictions upon interstate commerce to secure some apparent advantage to their own constituents, evidence the profound wisdom of the framers of the constitution in vesting complete control thereof in the National Government; but the tribunals whose jurisdiction is constantly invoked judicially to declare void all such legislation, do not for the time commend themselves to the favor either of those who urged its passage or of those who were to profit by its operation, and the fact that the complainant in such litigation is frequently a railroad or transportation company, only confirms the view of the undue favor of these courts to such litigants.

The jurisdiction of the Federal Judiciary does not end with the enforcement of national laws in the interest of the whole country against the temporary interest of a part. They are also required to administer justice between the citizens of different states. It goes without saying, that this judicial power was given to prevent the possibility of injustice from local prejudice, and not because in every case it was supposed to exist. The entire jurisdiction rests on the exceptional instances, for in a great majority of cases the same results would certainly be reached in the courts of the state as in the Federal courts. But in those courts or states where there is real danger from prejudice against a stranger, the same cause which is likely to obstruct justice for the foreign suitor creates a local feeling of resentment against the tribunal established to defeat its effect. The capital invested in great enterprises in the South and West is owned in the East or abroad, and the corporations which use it are therefore frequently organized in a different state from that in which the investment is made. Such companies all carry their litigation into the Federal courts on the ground of diverse citizenship with the opposing party, and, in view of the deep-seated prejudice entertained against them by the local population, it is not surprising that they do. That in most, if not in all cases, the feeling that prompts this avoidance of the state courts does great injustice

to the state judiciary is undoubtedly true. In jury trials, however, the fear of injustice from local prejudice is certainly sometimes justified. In these same states where the narrow provincial spirit is strong and local prejudices exist, there is deep fear of the abuse of judicial power, and the legislation of the state is directed to minimizing the influence and control of the judge over the action and deliberation of the jury. The extent to which this is carried was clearly set forth in an interesting article read before this association by Mr. Justice Brown some years ago. The slightest circumstance, although furnishing but a scintilla of evidence to support the contention of either party, requires the submission of the case to the jury. The office of a judge is reduced to that of a mere moderator of the trial. He is only permitted to lay down a few general principles of law in advance of the argument, while the application of them to the facts of the case and conflicting evidence is really committed to the zeal of contending counsel. The tendency of such procedure is to leave to the unrestrained impulses of the jury the settlement of all the issues of the case. Though the injustice likely to result to corporations from this procedure is manifest, the people of a locality where local prejudice exists have come to think that they have a vested right to the chances of success which it gives them in a suit against such opponents. When, therefore, in controversies with corporations of other states, they are carried before a court in which the jury are not their friends and neighbors, and in which the power is given to the judge to direct a verdict when the evidence for either party is so slight that a contrary verdict must be set aside, to comment on the evidence, to apply the law thereto, and to make plain, if need be, what the legal sophistries of counsel and their inaccurate statements of the evidence may have obscured, they feel that they are in a tribunal which they should avoid and which the corporations should naturally seek. The constant struggle of most corporations to avoid state tribunals in the sections of the country referred to, and to secure a Federal forum, even though it is followed by only limited success in the result of the litigation, is chiefly the cause for the popular impression in those states that the

Federal courts are the friends of corporations and protectors of their abuses.

Those abuses, however, really find their chief cause in political corruption, which it is wholly beyond the power of the Federal courts to prevent or eradicate. Too frequently the popular impulse is to remedy or punish the evil by giving judgment against the great corporations in every case, no matter what the particular issues or facts are, on the ground that the corporation has probably increased its capital or attained its success by corrupt methods. It is hardly necessary to point out that this mode of punishment by forfeiture and chance distribution cannot be countenanced in a court of justice, however meritorious the cause of complaint upon which it is founded.

Corporate corruption cannot be directly punished in the Federal courts, because the bribery of which many corporations are guilty is most difficult of legal proof and crimes of this character are usually committed against the state, so that Federal courts have no cognizance of them. It has been wisely settled by the adjudication of all courts, state and Federal, that the evils resulting from vesting in courts the power to set aside otherwise lawful acts of the legislature for alleged corruption in their passage, would exceed even the wrong done by such legislation, because of the uncertainty it would give to the binding effect of all laws and the overwhelming influence such power to inquire into legislative motives would give the judicial branch of the government in respect of all legislative action.

The abuses which too liberal charters and insufficient visitatorial power permit, are either for the state legislatures or for the state executive and courts, by *quo warranto*, to correct and remedy. State laws, which should forbid the issue of stock or the issue of bonds by any corporation until after an examination by a state board of supervision into the affairs of the company and a certificate that the assets justify it, would do much in this direction. The Federal courts can do nothing to prevent such abuses, and their action is not usually invoked until the evil is done, and only a bankrupt estate is left to administer,

The combinations known as trusts are now before the state courts, and I have no doubt from their decisions that legislation which experience will suggest, both by way of supervision over corporations and by criminal laws, will suppress much of their evil methods. It is settled and rightly settled, I submit, that the national government can do nothing in this direction, except where such trusts are for the purpose of directly controlling interstate commerce.

The main public evil of corporate growth, the corruption of politics, must be reformed by the people and not by the courts. Courts are but conservators ; they cannot effect great social or political changes. Corporations there must be if we would progress ; accumulation of wealth there will be if private property continues the keystone of our society ; the temptation to use money to corrupt legislatures and other political agencies will remain potent as long as undue privilege for corporations can be thus secured. The only real remedy is in the purification of the politics of the country, and the selection of incorruptible public servants. Dark as the prospect sometimes seems for such a change, we must not and need not despair. Public opinion is sound, the great heart of the American people is honest, and slowly but surely the light is breaking in on them. The adoption of civil service reform in Federal, state and municipal government is as certain to come as the nation is to live, and with its complete establishment the end of those indispensable assistants of successful political corruption, the machine and its boss, will cease to be. The mad rush for wealth, the fevered condition of business and the opportunity for making sudden fortunes have taken the attention of the more intelligent people from politics and made them blind or callous to political abuses. With their greater ability to see and appreciate the dangers of the republic, their share of the blame for present conditions is greater. But there are many signs of a quickened public conscience and of a willingness on the part of the intelligent and the pure to interest themselves in politics for their country's good.

The present successful use of corrupt methods by corpora-

tions is directly due to the neglect of the people to exercise the eternal watchfulness which is the price of pure government ; but those whose interest it is to secure popular support and who are willing to secure it by appeals to prejudice do not tell the people unpleasant truths, and are glad to find a scape-goat for the people's sins in the Federal Judiciary. It well rounds a rhetorical period to point to the Federal Judiciary as an irresponsible and irremovable body, wholly out of touch with the people and conniving at corporate abuses.

To an impartial observer it must seem remarkable that judges should conceive a love for soulless corporations and unduly favor them. Living as most of these judges do on their salaries and deriving no profit from corporate investments, they would seem to find little in their lives to blind them to the injustice of any claim or defence which a wealthy corporation may make.

If it were conceded that greed of power is an incentive so strong that Federal judges have yielded to it and have extended their jurisdiction over corporations beyond the lines marked by the constitution and the laws, this is far from establishing that justice has not been meted out to corporate suitors with impartial hand. The fact is that when we come to examine in detail the charges against the Federal courts, the burden of them is that they have assumed jurisdiction over corporate litigation without constitutional and legal right, and not that, in the hearing on the merits, corporations have been unduly favored. The latter is always assumed as a granted premise when the former is deemed to be established.

Having pointed out some of the reasons why the jurisdiction of the Federal courts in respect to corporations, be it exercised never so impartially, must under existing conditions arouse deep prejudice against them, and call forth severe assaults upon their conduct and motives, I come now to examine more in detail the charges which have been made by those who attempt specifications.

The first is that the Supreme Court in holding, in the Dartmouth College case, the legislative charter of a corporation to be a contract, the repeal of which was the impairment of its

obligation and was inhibited by the Federal constitution, committed a fundamental error, induced thereto by greed of jurisdiction, and thus furnished to corporations the means of maintaining and enjoying corruptly purchased privileges. I do not propose to discuss this much criticised case because it was decided in 1820, and has now nothing but an historical interest ; for no charter has been granted for years which does not contain a clause permitting its repeal or amendment, and a court could hardly give a wider scope to such a reservation clause in favor of the state's power than that which the Supreme Court of the United States gave in the Greenwood Freight Company case. With reference to the accusation that it was greed of jurisdiction which induced the court to hold that the revocation of a grant by a state was the impairment of a contract and so within the Federal constitution, it should be said that the people of the United States, instead of condemning this assumption of jurisdiction have by subsequent amendment expressly extended the Federal Judicial power to the cognizance of state aggression upon all vested rights whether resting in grant, contract or otherwise.

And this suggests the charge against the Supreme Court that it improperly seized additional corporate jurisdiction in its holding that the fourteenth amendment forbidding a state to deprive any person of life, liberty or property without due process of law protects the property of corporations as well as that of natural persons. It is difficult to see how any other result could have been reached. For, even if artificial persons are not referred to in the amendment, natural persons necessarily have vested rights in the property of corporations. It is said that the construction should have been limited so as to exclude corporations because the moving cause was only to give national protection to a newly freed race. In the light of the general language of the amendment, this would have been a narrow construction indeed, and one which nothing could have justified except the conviction now firmly held and declared in some quarters, that Federal jurisdiction to preserve any rights, even those declared in Magna Charta, is an unmitigated evil to be avoided by interpretation however strained.

And yet the Supreme Court is attacked with invective and epithet by the same critics for refusing to hold in the Sugar Trust case that the power to regulate interstate commerce includes within it the power to inhibit the purchase by one company of substantially all the plants for refining sugar in this country with the purpose of controlling its sugar markets. To extend the Federal regulation of interstate commerce to that of the purchase of the means of producing a commodity which, when produced, is to be the subject of commerce both state and interstate, requires a construction of the interstate commerce clause so broad that, if accepted, it would have been difficult to fix a limit beyond which Congress might not go in its control of mercantile business and manufacturing in every community. It would have seemed to give some ground for the charge so often made that, through Federal judicial decisions, rights of the states are being absorbed in the national government.

As I have already said, the burden of the specifications against the Federal Judiciary is not that they unduly favor corporations in the hearing of cases, but that they have improperly given corporations opportunities to avoid the state courts by resorting to the Federal courts. Hence the decisions of the Supreme Court, by which corporations organized in one state and suing or being sued in another are permitted to select the Federal courts as a forum, have been the subject of the severest animadversion, and the judges rendering the decisions are charged with having been consciously guilty of flagrant usurpation and with intentional violation of the law and the constitution. When corporations first appeared in the Federal courts, it was held that a corporation was not a citizen within the meaning of the judiciary act or the constitution, and that Federal jurisdiction asserted on the ground of diverse citizenship, in a cause to which a corporation was a party, must depend on the citizenship of the stockholders or members of the corporation. As it had also been ruled that the words of the judiciary act giving circuit courts jurisdiction in every suit between a citizen of the state where it was brought, and the citizen of another state only included suits where all

the parties on one side were of different citizenship from that of all of those on the other, the result was that no corporation could resort to a Federal court unless all its stockholders were citizens of another state from that in which the suit was brought, and the ownership of one share by a resident of the same state with that of the opposing party ousted the jurisdiction. And this, the Supreme Court held until 1844. In that year the question arose again, and the court held that, for purposes of Federal jurisdiction, a corporation was a citizen of the state which created it, and soon thereafter laid down the doctrine, always followed since, that the members of a corporation are to be conclusively presumed to be citizens of the state of its creation. This conclusive presumption was a fiction, adopted, as Mr. Justice BRADLEY has explained, to avoid the difficulty and injustice caused by the frequent appearance in such cases of a single resident stockholder. It was in effect a changed construction of the judiciary act for reasons which had not forcibly presented themselves to the court when the question first arose. It was certainly true that when corporations, organized in other states than that where suit was brought, appeared in litigation, they represented members, a great majority of whom were either citizens of other states or aliens. If any local prejudice was likely to have effect against a non-resident natural person, it certainly would have effect against a corporation from another state, and the ownership of a few shares of its stock by a resident would not obviate it. The result reached by the decisions was quite within the constitutional grant of Federal judicial power, for that covers all controversies between citizens of different states, and it is immaterial whether in such controversies are also involved, on both sides, citizens of the same state. There was such a real difference for the practical purposes of a trial and the bearing of local prejudice upon it between a suit by or against a foreign corporate body with one or more resident stockholders, whose identity was lost in that of the corporate party litigant, and a suit by or against parties to the record who were natural persons, some of them residents and others non-residents, that the exception made in respect

to corporations in the established construction of the judiciary act would seem sound and reasonable.

The holding that a foreign or non-resident corporation must be excluded from resort to a Federal forum, because it had one or more resident stockholders would practically deprive the owners of nearly all foreign capital to be invested in the newer states of the Union of any opportunity to sue or defend in the Federal courts, because, in the nature of things, their capital must assume a corporate form, and in companies with thousands of shares of capital stock transferable without restriction, a share or two, at least, would be sure to find its way into the possession of a resident owner. And yet the reason for the constitutional provision applied more strongly to such corporate investments than to those of non-resident natural persons.

The ruling was directly in the interest of the new states who were thirsting for foreign capital, because it removed one of the hindrances to its coming. It was, therefore, exactly in accord with the intention of the constitution. It gives but a contracted view of the purpose of the framers of that instrument in providing a tribunal between citizens of different states, which was equally related to both, to regard it solely from the standpoint of the non-resident and as intended only to secure a benefit for him. It is crediting them with a much more statesmanlike object to say, that while the provision was, of course, intended to avoid actual injustice from local prejudice, its more especial purpose was to allay the fears of such injustice in the minds of those whose material aid was necessary in developing the commercial intercourse between the states, and thus to induce such intercourse and the investment of capital owned by citizens of one state in another. In this light, it is only one of several provisions of the constitution intended to prevent unnecessary and prejudiced restraints upon interstate commerce, and it confers more benefit upon those against whose prejudice it is intended as a shield than upon those whose interests are directly protected.

The decisions under discussion were made by the Supreme Court in the days of Chief Justice TANEY, and with his con-

currence at a time when its members are now thought to have been inclined toward a narrower construction of the constitution and Federal jurisdiction and powers than their predecessors.

Moreover, the people of the United States for fifty years have acquiesced in this holding. In the last half century, it has always been within the power of Congress by two lines of legislation to reverse it, and, although, during that period, the party of strict construction and state's rights was for years in control of Congress, and the judiciary act was four times substantially amended, the decisions remain the law of the land. When it requires a constitutional amendment to correct or restrain an unwarranted assumption of power by a court, the machinery for securing it is so cumbersome that the failure by this means to restrain the court is not a conclusive argument in favor of the people's acquiescence in the court's assertion of jurisdiction. But where, as in the present case, the issue was merely one of construing a statute, the failure of Congress for half a century to amend or overrule the construction given is as strong an argument as can be adduced to justify the action of the court, and would, in this case, seem to be the best possible refutation of the severe charge that the Judges, who made these decisions, were guilty of flagrant and intentional usurpation.

If it is true that citizens of one state organize corporations under the laws of another state to do business in the former state, and thereby carry controversies with their fellow citizens into the Federal courts, this is an abuse which should be remedied by Congress as other frauds upon the jurisdiction have been provided against.

The Federal courts have also been severely arraigned for undue amplification of their powers in the matter of receivers of railroad companies, due as it is charged to their leaning toward such corporations and a desire to protect them. This count of the general indictment against the Federal Judiciary is more fully and elaborately treated in a memorial presented to Congress by the Legislature of South Carolina, than anywhere else. The occasion for the protest was the commit-

ments for contempt by the Circuit Court of the United States sitting in South Carolina of certain state officers. In one case the contemnors were taxing officers who, though they knew the property to be in the hands of the receiver of the Federal court, without any application to the court, seized it for taxes. In the other case, a constable without search warrant broke into the warehouse of a railroad in the hands of the court's receiver and seized a cask of liquor on the ground that it had been transported into the state contrary to the provisions of the state dispensary law. The cask had been imported before the dispensary law went into effect and had been held by the receiver because the whereabouts of the consignee could not be discovered. The circumstances in each of these cases rather indicate a desire on the part of the state authorities to seek a conflict with the Federal court than an aggressive and domineering spirit in the latter. When the state authorities in a decent and orderly way subsequently applied to the court for an order upon the receiver to pay the taxes, the objections of the receiver were heard and overruled and an order made upon him to pay.

The deep spirit of distrust of the Federal courts in which the memorial is written may be inferred from one of its concluding sentences, in which the Federal courts of equity are referred to as "having been degraded to their present position of being feared by the patriotic and avoided by the honest." We are permitted to conjecture that the memorialists were not wholly unbiassed in discussing the decisions of the Federal courts and their integrity and standing, when we read the statement in the inaugural address of the present Governor of the state, who was one of the signers of the memorial, that he and the men to whom he was speaking in this year of grace, 1895, were "South Carolinians by birth and choice, Southerners on principle and Americans by force of circumstances."

The main purpose of the memorial was to show that the practice of Federal courts of equity in appointing receivers to operate railroads is a usurpation of authority wholly without warrant in the English High Court of Chancery, by the pro-

cedure in which, the scope of equitable remedies in the Federal courts is usually governed. To establish this, the memorialists relied chiefly on the judgment of Lord Cairns in the Court of Chancery appeals in the case of *Gardner v. the London Chatham & Dover Company*, in which the order of the Vice-Chancellor appointing a manager of the defendant railway on the application of a mortgagee of the railway tolls was reversed. The judgment was placed upon two grounds, first, that the mortgage gave no right of sale and liquidation, so that the order was really for a permanent management of a going business, while the practices in courts of equity justified the appointment of receivers only until a sale and liquidation; and, second, that by the charter of the company the franchises were personal and non-assignable, and could not be exercised by a receiver. The first reason has little or no application to the vast majority of cases, in which railroad receivers have been appointed in this country, for generally the remedy sought has been a sale and liquidation, and the receiver has thus been appointed to serve only until the sale. The second ground of the judgment does not relate to the competency of a court of equity to manage a railroad or other going business through an agent, *pendente lite*, but only to the assignability of franchises, and it furnishes as little support as the first ground to the claims of the memorial. The power to mortgage conferred by statute on railway companies in this country usually contains express authority to mortgage both the railroad and the franchises to operate it. The necessary implications from this are the right to sell the franchises with the road at a foreclosure sale, and the power of the court in which foreclosure proceedings are had, to preserve the property with its assignable franchises by temporary custody and operation of the road under such franchises pending the sale.

By reference to Lord Justice BAGGALLAY's judgment in the case of the *Manchester & Milford Ry. Co.*, 14 Ch. D. 657, it appears that the result in Gardner's Case was a surprise to the profession, and was in conflict with the practice of appointing managers in such cases which had been in vogue in the

chancery courts of England for ten years previous, and which had had the sanction of so great a chancery lawyer as Lord HATHERLY. Moreover, no sooner was the decision announced in the Gardner Case, than Parliament passed an act expressly authorizing the appointment of railroad managers by the court of chancery, showing that, in the opinion of Parliament, jurisdiction to manage railroads, pending litigation over them, by officers of the court was a power that courts of equity should have, if they did not already have it.

The charge of usurpation in the appointment of receivers becomes still less maintainable when we consider the history of receiverships in this country. Gardner's Case was decided in 1866. As much as ten years before this, the Supreme Court of the United States in *Covington Drawbridge Co. v. Shepard*, 21 How. 112, had referred to the practice in the English court of chancery to order a receiver to be appointed to manage railways and other corporate property, to take the proceeds of the franchises and to apply them to pay the creditors filing the bill, and had approved and adopted it in the case of a bridge company. Thereafter receivers were appointed for railways and it had become a settled practice not only in the Federal courts but in state courts when Gardner's Case was decided. Even if that case cannot be reconciled with the practice of appointing receivers under the conditions existing in this country, as I have attempted to show it can be, there would still seem to be no binding or jurisdictional obligation on courts of the United States to reverse their settled procedure of ten years standing based on English precedent to accord with a new and unexpected ruling in the English courts, and one the effect of which was immediately done away with by an act of Parliament restoring the old practice.

The appointment of receivers to operate railroads pending suits in foreclosure and creditor's bills, instead of being an abuse of authority by the Federal courts was a most commendable use of an ordinary equitable means of preserving the *status quo* with respect to a new kind of property and a pressing emergency. Generally no one but the parties are

interested in preserving the subject matter of the suit as a going concern till it can be sold, but in the case of a railroad the public are even more interested than the parties in having this done. It is mentioned in the South Carolina memorial as a measure of the abuse of Federal jurisdiction in this regard that one-fifth of the railroad mileage in the United States is in the hands of Federal court receivers. Considering the severity of the times and the suicidal cutting of rates by railroad companies for the purpose of securing business, I do not know that this proportion unfairly indicates the number of embarrassed and bankrupt roads in this country, but it is hard to see why it is an argument against the appointment of receivers to operate them. The disastrous consequences to the whole country, were these great arteries of the Nation to cease to flow, can hardly be overstated; and yet, unless in the course of liquidation sale and reorganization, they could, when insolvent, be withdrawn from liability to seizure and dismemberment by ordinary executions in the various jurisdictions which they traverse, their operation would become impossible. The ordinary insolvent laws of each state, even if their procedure had been at all adapted to the running of railroads, as it was not, would have supplied in such case but a poor substitute for the present receivership. Most railroads are to-day interstate, and the advantage of an *ad interim* management under practically the same jurisdiction on both sides of state lines is apparent. In the absence of statutory provision for such an exigency, the flexible procedure of a court of equity is fitted to meet it, and although the remedy was adopted soon after the building of railroads, more than forty years ago, and has been applied with increasing frequency ever since, it has not been deemed necessary by Congress or state legislatures to provide any other means for bridging the undoubted difficulties presented by the insolvency of railroad companies.

One of the greatest objections urged to receiverships in the South Carolina memorial is that it removes the railroad property from local jurisdictions. But this objection would be incident to any imaginable temporary management of the railroad pending proceedings to sell and distribute proceeds. The

injury to the sovereignty of the state involved in the requirement that its taxing officers shall make application to the Federal court having custody of property for an order for the payment of the taxes due upon it, instead of violently taking it out of the court's possession, is one that must be charged to the Constitution of the United States, to the supremacy of the Federal jurisdiction where it conflicts with that of the state therein declared, and to the circumstances by the force of which South Carolina is still in this country. The charge that in appointing receivers the Federal courts abolish the right of trial by jury in great stretches of country is untrue, for by the statute of 1887 suit may be brought against a receiver without leave of court, and this permits a suit at law with all its incidents. The fear entertained that the management by the Federal courts of property worth \$1,300,000,000, without responsibility, would lead to malversation of funds, and corruption does not seem to be justified by the history of Federal receiverships. The fact is, that no possible system of managing railroads could be better adapted to a summary investigation of the details of the management than that by a court of equity in which the court will always and at once entertain complaints by anyone in interest against its receiver and examine the facts upon which they rest. This may account, in part, for the very few instances of official corruption among Federal receivers.

On the other hand, if any other and better way can be devised for the temporary management of insolvent railroads pending their sale, it may be conceded that there are substantial reasons for relieving Federal courts of equity from the duty. The business has grown to such an extent that regular judicial labors are much interfered with by the consideration of mere questions of railroad management. Unpleasant public controversies often follow in the wake of receiverships, having a tendency to put the court in the attitude of a party. The more or less complete dependence of the court upon the receivers in matters of policy and the possibility that this confidence may be misplaced make the jurisdiction an irksome one. The immunity enjoyed by a receiver and a railroad in his charge from ordin-

ary process *in rem* is very attractive to struggling railroad owners and friendly litigation is often begun merely to secure a receiver and tide over a stringency in the interest of all concerned. With no one in interest to oppose the appointment or to move its discharge after it is made, a receiver is secured and he is continued as long as all parties do not object, and do not press the cause to final disposition. Courts usually have so much to attend to that they do not and cannot investigate the weight or validity of reasons for delay in causes when not brought to their attention by complaint of some of the parties. Meantime the receivership is maintained and the irritation incident to the withdrawal of the railroad from local jurisdictions is continued. The work of managing the road is saddled upon the court pending the coming of a time when a reorganization may be agreed upon or a better price obtained. I sympathize heartily with every effort to impose a practical limitation upon the duration of receiverships. The use of the courts as a harbor of refuge from creditors during a financial storm may be abused, and doubtless has been. The temptation to this resort is greatly increased if, as is too often the practice, the controlling officer of the company is continued in the management as receiver. The patronage incident to the jurisdiction is one of its evils. Recognizing this and wishing to avoid a disagreeable controversy over place, courts usually acquiesce in the appointment of a person recommended by the parties, who is not infrequently the president or manager of the company, and whose failure to oppose the receivership, it may be, has been secured by such a recommendation. Consent applications for receiverships would be much less common if it were provided by statute that, wherever a case is made on preliminary application for the immediate appointment of a receiver, the clerk or marshal should act as temporary receiver for thirty days, with a fixed per diem compensation, at which time a permanent receiver, not an officer of the court, should be selected by the court after full notice to all parties, and that no one connected with the previous management of the railroad or interested in its bonds or stock should be eligible, even with consent of the parties. It has some

times seemed to me that by virtue of the power to pass a bankrupt law, and to regulate interstate commerce, a national bureau for the sale of the assets of insolvent interstate railroads and their *ad interim* operation might be established, something like that now provided for National banks, and that the executive head of such a bureau might be better able to speed the sale of the railroads and shorten the duration of their official management than courts. When, however, one attempts to formulate a system which shall have the flexibility of the present procedure and its adaptability for preserving the real *status quo* during the adjustment, one is obliged to admit that the court management *pendente lite* has advantages over any other, anomalous in some respects as it may seem. Probably this explains the failure of Congress or the state legislatures to provide any other system, and even the zealous South Carolina memorialists in their recommendation to Congress were unable to point out a better way than court receiverships with a few minor limitations. In any event, until some new way is devised for the temporary operation of railroads, pending insolvency or foreclosure and sale, courts must assume it, and it ill becomes any one to criticise their action in doing so, and to charge it to their greed of power, when any other course would result in disastrous consequences to the parties in interest and the country at large.

On the whole, when the charges made against Federal courts of favoritism toward corporations are stripped of their rhetoric and epithet, and the specific instances upon which the charges are founded are reviewed, it appears that the action of the courts complained of was not only reasonable but rested on precedents established decades ago and fully acquiesced in since, and that the real ground of the complaint is that the constitutional and statutory jurisdiction of the Federal courts is of such a character that it is frequently invoked by corporations to avoid some of the manifest injustice which a justifiable hostility to the corrupt methods of many of them inclines legislatures and juries and others to inflict upon all of them.

We come finally to the relation of the Federal courts to

organized labor. The capitalist and laborer share the profit of production. The more capital in active employment, the more work there is to do, and the more work there is to do, the more laborers are needed. The greater need of laborers, the better their pay per man. It is clearly in the interest of those who work that capital shall increase more rapidly than they do. Everything, therefore, having a legitimate tendency to increase the accumulation of wealth and its use for production will give each workingman a larger share of the joint result of capital and labor, and it is in a large measure, because this country has grown more rapidly in capital than in population, that wages have steadily increased. But while it is in the common interest of labor and capital to increase the fruits of production, yet in determining the share of each their interests are plainly opposed. Though the law of supply and demand will doubtless, in the end, be the most potent influence in fixing this division, yet during the gradual adjustment to the changing markets and the varying financial conditions, capital will surely have the advantage, unless labor takes united action. During the betterment of business conditions, organized labor, if acting with reasonable discretion, can secure much greater promptness in the advance of wages, than if it were left to the slower operation of natural laws and, in the same way, as hard times come on, the too eager employer may be restrained from undue haste in reducing wages. The organization of capital into corporations with the position of advantage, which this gave in a dispute with single laborers over wages, made it absolutely necessary for labor to unite to maintain itself. For instance, how could workingmen, dependent on each day's wages for living, dare to take a stand, which might leave them without employment if they had not by small assessments accumulated a common fund for their support during such emergency? In union they must sacrifice some independence of action, and there are bad results from the tyranny of the majority in such cases, but the hardships which have followed impulsive resort to extreme measures have had a good effect to lessen these. Experience, too, will lead to classification among the members

so that the cause of the skilled and worthy shall not be leveled down to that of the lazy and neglectful. Like corporations labor organizations do great good and much evil. The more conservatively and intelligently conducted they are, the more benefit they confer on their members. The more completely they yield to the dominion of those among them who are intemperate of expression and violent and lawless in their methods, the more evil they do to themselves and society. Unfortunately, there are large organizations of the latter class and, in the heat of a bitter contest with employers, rights of person and property are sometimes openly violated in avowed support of the cause of labor. The infractions of the law actual and threatened are palpable, and the interference of the courts by their usual processes to prevent irreparable injury to business and property becomes necessary. Such judicial action often results in discouraging the whole movement and brings down upon the courts the fierce denunciations of the defeated leaders and arouses the hostility of many who would not join in the open breaches of the law, and yet so sympathize with the cause as to blind them to the necessity of the suppression of such lawlessness.

The employees of railroad companies and others engaged in transportation of freight and passengers generally have well organized unions, and the controversies arising over wages and other issues have been many. A vast majority of these have been settled without extreme measures through the conservative influence of level-headed labor leaders and railroad managers, but in the last twenty years there have been some very extended railroad strikes, accompanied by the boycotts and open violence with which society has now become familiar. The fact that many railroads have been operated by Federal receivers, the non-residence of railway corporations in the states where the strikes occur, and the interstate commerce feature of the business, have brought some of these violations of property and private and public right within the cognizance of Federal courts. Because the participants in such contests have been spread more widely over the country than in similar contests with which State courts have had to deal, the action of the

Federal courts in these cases has attracted more public attention and evoked more bitter condemnation by those who naturally sympathize with labor in every controversy with capital.

The efficacy of the processes of a court of equity to prevent much of the threatened injury from the public and private nuisances which it is often the purpose of the leaders of such strikes to cause, has led to the charge, which is perfectly true, that judicial action has been much more efficient to restrain labor excesses than corporate evils and greed. If it were possible by the quick blow of an injunction to strike down the conspiracy against public and private rights involved in the corruption of a legislature or a council, Federal and other courts would not be less prompt to use the remedy than they are to restrain unlawful injuries by labor unions. But I have had occasion to point out that the nature of corporate wrong is almost wholly beyond the reach of courts, especially those of the United States. The corporate miners and sappers of public virtue do not work in the open, but under cover; their purposes are generally accomplished before they are known to exist, and the traces of their evil paths are destroyed and placed beyond the possibility of legal proof. On the other hand, the chief wrongs committed by labor unions are the open defiant trespass upon property rights and violations of public order, which the processes of courts are well adapted both to punish and prevent.

The operation of the interstate commerce law is an illustration of the greater difficulty courts have in suppressing corporate violations of law than those of trade unions. The discrimination between shippers by rebates and otherwise, which it is the main purpose of the law to prevent, is almost as difficult of detection and proof as bribery, for the reason that both participants are anxious to avoid its disclosure; but when the labor unions, as they sometimes do, seek to interfere with interstate commerce and to obstruct its flow, they are prone to carry out their purposes with such a blare of trumpets and such open defiance of law that the proof of their guilt is out of their own mouths. The rhetorical indictment against the

Federal courts, that from that which was intended as a shield against corporate wrong, they have forged a weapon to attack the wage earner, is in this way given a specious force which a candid observer will be blind to ignore. Thus are united in a common enmity against the Federal courts the populist and the trade unionist with all those whose political action is likely to be affected by such a combination. And yet their enmity has no other justification than the differing and unavoidable limitations upon the efficacy of judicial action in respect to corporate and labor evils.

As a matter of fact there is nothing in any Federal decision directed against the organization of labor to maintain wages and to secure terms of employment otherwise favorable. The courts so far as they have expressed themselves on the subject recognize the right of men for a lawful purpose to combine to leave their employment at the same time, and to use the inconvenience this may cause to their employer as a legitimate weapon in the frequently recurring controversy as to the amount of wages. It is only when the combination is for an unlawful purpose and an unlawful injury is thereby sought to be inflicted, that the combination has received the condemnation of the Federal as well as of state courts.

The action of the Federal courts all over the country in the recent American Railway Union strike in issuing injunctions to prevent further unlawful interference by the strikers with the carrying of the mails, and the flow of interstate commerce, followed by the commitment for contempt of the strike leaders who defied the injunction served on them, is what has called out the official protests of the Governors of Illinois and Colorado, and the phrase "Government by Injunction" has been invented to describe the alleged usurpation of power by the Federal tribunals in this crisis.

When the history of the great strike shall be written in years to come, the absurd expectations and purpose of its projectors and their marvellous success in deluding a myriad of followers into their active support will seem even more difficult of explanation than it does to-day. The mind that could conceive and so far execute the plan of taking the entire popu-

lation of this country by the throat to compel them to effect the settlement of a local labor trouble in Chicago, was that of a genius however misdirected. The Governor of Illinois, who coined the phrase "government by injunction," says that the Federal courts have added legislative and executive functions to their ordinary judicial office, in that they have declared in their orders of injunction that to be unlawful which was lawful before, and have sought to enforce obedience to such orders by an army of marshals and soldiers. It is a little difficult to understand the working of a mind having the discipline of a legal training and the experience of judicial service which can honestly and sincerely maintain (and I do not wish to impugn the sincerity of the Governor of Illinois) that the combination described in the bill in the Debs Case and enjoined in the order of injunction was not unlawful. If it was not so, then there is no law in this country securing the right of private property, no law authorizing the Federal Government to operate the mails, no law by which the regulation of interstate commerce is vested in the General Government. A public nuisance more complete in all its features than that which Debs and his colleagues were engaged in furthering cannot be imagined. Such nuisances have been frequently enjoined by courts of equity on the bill of the Attorney-General. Was there any doubt that Debs proposed to continue his unlawful course unless restrained? Was there any doubt that the injury would be irreparable and could not be compensated for by verdict at law? Was it for the court to hesitate to issue its process because it had reason to believe that it would not be obeyed? The novelty involved in the application of such a remedy to such an injury was not that injuries of the same general character had not before been restrained by injunction, but only that never before in the history of the courts had injuries of this kind been so enormous and far reaching in their effect. It was not that men had not before been ordered by process of court to desist from such injuries, but never before had so many men been engaged in inflicting them. Nor can it affect the power of Federal courts to remedy wrongs within their lawful cognizance because the wrong

would have been prevented if the executive of another sovereignty than that under which they are constituted had acted promptly to suppress it. The Federal courts did not assume executive powers any more than they do so when they issue any process to the Marshal and the Marshal as the subordinate of the President executes it. The extent of the actual and threatened injury and the possible resistance to lawful process required the Marshal to call to his assistance much aid, but it is a latter day doctrine that a court is usurping the executive function, in calling upon the executive to use additional force to avoid a possible defeat of its lawful process. The conservative course of the President and the Attorney-General in first applying to the courts for process and the subsequent firmness exhibited by those officers in executing that process by all the means available will cause the country to hold them always in grateful remembrance. The duty of the courts to act on this initiative was so plain that while it does not entitle them to any especial commendation, it would seem that it should protect them from serious attack.

The real objection to the injunction is the certainty that disobedience will be promptly punished before a court without a jury. It is hardly necessary to defend the necessity for such means of enforcing orders of court. If the court must wait upon the slow course of a jury trial before it can compel a compliance with its order, then the sanction of its process would be seriously impaired. Has any injustice been done to Debs in his trial by the court? Is there the slightest doubt in the mind of his fiercest supporter that he violated the injunction? Why, then, complain of his conviction before a tribunal authorized to try him? The argument seems to be that because many men are determined to violate the rights of the public and their fellow-citizens in spite of the lawful orders of the Federal court restraining them from so doing, they should, on account of their number and popular strength, have a right which no Anglo-Saxon has hitherto ever enjoyed, to interpose a jury trial between them and the enforcement of a court's order. If the criticisms under consideration are directed against the existence of courts, then their weight

depends on different considerations from those which apply on the assumption that courts are to be maintained for the purpose of remedying wrongs. But they are professedly based on the Constitution of the United States and that certainly contemplates courts, whose decrees shall be enforced, however, much resisted, and which shall not be merely advisory councils whose efficacy depends on their powers of persuasion.

I am aware that there were many conservative unprejudiced and patriotic citizens in this country, many of them members of the Bar and of this association whose anxiety that the Chicago riots should be suppressed was as great as that of any one, and yet who were of opinion that the action of the Federal courts in issuing the injunctions, which were issued on the application of the Attorney-General were an unwise stretching of an equitable remedy to meet an emergency which should have been met in other ways. To all such persons, I commend the reading of Mr. Justice BREWER's opinion in the Debs Case. It is a great judgment of a great court, and makes it as clear as midday that the process therein issued was justified by every precedent, and was the highest duty of the court. The exercise of that duty has, however, only increased the number of those who sincerely believe that the Federal courts are constituted to foster corporate evils and to destroy all effort by labor to maintain itself in its controversies with corporate capital.

I have reached the end of a much too long discussion of the relation of the Federal Judiciary to some of the important issues of the day. It will not be surprising if the storm of abuse heaped upon the Federal courts and the political strength of popular groups whose plans of social reform have met obstruction in those tribunals shall lead to serious efforts through legislation to cut down their jurisdiction and cripple their efficiency. If this comes, then the responsibility for its effects, whether good or bad, must be not only with those who urge the change but also with those who do not strive to resist its coming.

The earlier assaults upon the Federal Judiciary and their harmless character in the light of the event reconciles one to

much of the fiery invective and blood-curdling epithet hurled at men who equally with their accusers are American freemen, impressed with the absolute necessity for maintaining sacred, the guaranties of life, liberty and property, and who are probably not more in love with corruption and greed, or more disposed to crush the humble and worthy, than the average of their fellow-citizens.

The saving grace of American humor which delights in the contemplation of grotesque exaggeration has often saved us from domestic turbulence, which the turgid exuberance of denunciatory language might have otherwise excited, against lawfully-constituted authority ; and it may be that same useful trait will prevent the success of the present agitators against the Federal courts.

But whatever fate betide the Federal Judiciary I hope that it may always be said of them, as a whole, by the impartial observer of their conduct, that they have not lacked in the two essentials of judicial moral character, a sincere desire to reach right conclusions and firmness to enforce them.

THE DECISIONS IN PENNSYLVANIA ON THE STATUTES OF 1887 AND 1891 REGULATING THE LIQUOR TRAFFIC.

Discussion of the liquor laws from a legal, political and moral standpoint, has created such public agitation over the subject and made it of so much importance, that a general report of the workings of all systems throughout the country is near at hand. Anticipating such a report, it may be assumed that a thorough knowledge of the existing laws of any state will not be without advantage to one who wishes to become an intelligent reader of the question ; nor will interest in such laws be confined to the limits of that state alone. Discovery of the weakness in a law, and proper remedial legislation for the same, can only be obtained by a comparison with other systems, their interpretation, workings and effect.

The extent and value of the business legalized by the